

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

JUDY K. JONES,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-06-741-R
	)	
MICHAEL J. ASTRUE, <sup>1</sup>	)	
Commissioner, Social Security	)	
Administration,	)	
	)	
Defendant.	)	

**REPORT AND RECOMMENDATION**

as to

**Plaintiff's Application for Award of Attorney's Fees**  
**Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412**

Plaintiff, Judy K. Jones, has filed a motion seeking an award of attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, in the amount of \$4,143.60 [Doc. No. 24, p. 1]. Plaintiff specifically recites that "[t]his amount should be paid directly to Plaintiff's attorney." *Id.* Defendant Commissioner has responded, objecting not to the amount of the requested award but to the payment of the fee directly to Plaintiff's counsel [Doc. No. 26]. The issue has been referred to the undersigned Magistrate Judge by United States District Judge David L. Russell for the submission of findings and recommendations [Doc. No. 25, p. 2].

By order issued in another case subsequent to the referral of this matter, Judge Russell adopted the recommendation of Magistrate Judge Gary M. Purcell that an EAJA

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<sup>1</sup>Effective February 1, 2007, Michael J. Astrue became Commissioner of Social Security. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Michael J. Astrue is substituted for Jo Anne B. Barnhart as Defendant in this action.

fee award should be made payable to Plaintiff rather than to her counsel. *See Yeamans v. Astrue*, CIV-06-599-R, Doc. Nos. 27 and 28. In light of this determination by Judge Russell, the undersigned substantially repeats Judge Purcell's recommendation below.

**RECOMMENDATION AND NOTICE OF RIGHT TO OBJECT**

In consideration of the parties' pleadings, the undersigned finds that, as a prevailing party, an award of attorney's fees to Plaintiff pursuant to EAJA in the amount of \$4,143.60 is reasonable. The undersigned therefore recommends that Plaintiff's application for an award of attorney's fees pursuant to EAJA [Doc. No. 24] be granted and Defendant ordered to pay to Plaintiff \$4,143.60 in fees under the EAJA.

Furthermore, based on the express language of the EAJA statute, the undersigned recommends that the fee award should be made payable to Plaintiff rather than to her counsel. *McGraw v. Barnhart*, 450 F.3d 493, 497 (10<sup>th</sup> Cir. 2006). Plaintiff acknowledges that she has entered into a contract with her counsel to assign her interest in any EAJA fee award to her counsel [Doc. No. 24, p. 3 and Attachment 1]. Plaintiff's counsel's interest in obtaining the fee award may be preserved by requiring that the fee award be mailed to Plaintiff in care of Plaintiff's counsel, Marianna E. McKnight, Attorney at Law, P.L.L.C., 5553 S. Peoria Ave., Suite 103, Tulsa, Oklahoma, 74105. Further, if Plaintiff's counsel is ultimately granted attorney's fees pursuant to 42 U.S.C. § 406(b)(1), counsel shall refund the smaller amount to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10<sup>th</sup> Cir. 1986).

The parties are advised of their right to object to this Report and Recommendation by October 23, 2007, in accordance with 28 U.S.C. §636 and Local Civil Rule 72.1. The

parties are further advised that failure to make timely objection to this Report and Recommendation waives their right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the Magistrate Judge in this matter.

ENTERED this 3rd day of October, 2007.

  
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BANA ROBERTS  
UNITED STATES MAGISTRATE JUDGE